## II. BOOK REVIEWS.

JURISPRUDENCE, LAW, AND ETHICS. PROFESSIONAL ETHICS. By Edgar B. Kinkead. New York: The Banks Law Publishing Company. 1905. pp. vii, 381. 8vo.

This is largely a book of quotations, of familiar quotations, from the current treatises on jurisprudence. The learned author has confined himself to books in English. The passages cited are naturally of very different merit; some are wise, some are silly, many are vapid. Mr. Kinkead gives them all with perfect impartiality. They form a jumble of contradictions. Mr. Austin, for instance, has little in common with Professor Lorimer. The reader perusing them all would certainly have food for thought, but for rather perplexed thought. Nor would the author, we are afraid, much help him out of his perplexity. Professor Kinkead has often given the different views of a problem without seeking to solve it.

The main thesis of the treatise is that law has something to do with morals, but exactly what is not made clear. Indeed the book is not free from faults common to many of its class, a failure in precision and definition, an unwillingness to grapple closely with facts, and a disposition to slip off into profitless generalities.

Thus, p. 98. "Opinions differ, some regarding the Roman law as clumsy, bombastic in language, while others regard it as a model." Is the Roman law clumsy and bombastic in language? Is the Roman law a model, and if yea, for what is it a model?

P. 152. "Transcendental ethical theories may be found on paper, but are not present when lawyers and judges are called upon to act."

What are transcendental ethics? How do they differ from other ethics? Why are they not present as alleged?

P. 167. "But Ethics diverges from Psychology, because the science of human duty is to be determined by the outward acts of men, though they may parallel in so far as it may be necessary to resort to well-settled theories."

By what is psychology determined unless by the outward acts of men? How far is it necessary to resort to well-settled theories? What theories are well settled?

P. 205. "A flatly absurd rule or unjust decision within the jurisdiction, for practical purposes, must be acknowledged to be both the source and the evidence of the law, until overruled or changed."

Is there any different acknowledgment to be made for theoretical purposes? If so, how and why?

P. 205. "If it is not in harmony with the moral principle, it may not be regarded as sound law, but nevertheless it will operate as law until overruled or modified by the legislature."

*Is* it to be regarded as sound law? Does sound law mean law as it is or law as it ought to be? What is the difference between "being" law and "operating as" law?

We might go on indefinitely.

Yet one cannot but be glad that the learned author has confined himself mainly to generalities, however vague and contradictory, when one sees how he deals with a special case, in accepting the Maybrick legend.

He tells us that Mrs. Maybrick was "a beautiful, cultured, highly connected lady"; that her conviction seems to have been brought about by the tyranny of an English judge who "was seized with a frenzy because he thought this American woman had been untrue to her marriage vows"; that "the suspicion of Mrs. Maybrick's complicity consisted of the fact that arsenic had been found in his [her husband's] body, that arsenic was found in his medicines, in his victuals"; that "it was not shown in the trial that Mrs. Maybrick ever anywhere purchased any arsenic"; and that "this once beautiful American lady, who was related to a Chief Justice of the United States and to other prominent American people, remained for years in a solitary English prison."

Would any one suppose from this that the fact of the woman's being an adulteress rested not on the "thought" of a judge "seized with a frenzy," but on her confession in open court; that it was proved and had to be admitted by her counsel and herself that she did buy fly-papers for the purpose of preparing a solution of arsenic, and did prepare such a solution; and that she put a white powder into a bottle of liquid food in which arsenic was detected. Her excuse was that she wanted the solution of arsenic as a cosmetic, and that her husband told her to put in the powder. The jury did not believe her, and in view of the fact that on a Wednesday when the doctor considered that her husband was recovering from an attack of nervous dyspepsia she wrote to her paramour that her husband was "sick unto death," and that her husband did die on Friday, it would have been strange if they had believed her.

On p. 138, Professor Kinkead says, "inspired by a spirit of patriotism, if for no other reason, Americans should lay claims of superiority to [*sic*] its governmental and legal systems." This is an odd bit of chauvinism to find in a treatise on jurisprudence. Yet the English can doubtless learn many things from us to their advantage. But we are afraid a steady and unhysterical administration of criminal law is not among them.

It is the just boast of the English courts that on the trial of an indictment even-handed justice is dealt out without regard to looks or education or station. The judge holds the jury up to the law and the facts. "A beautiful, cultured, highly connected lady" related to a Chief Justice and other prominent people, who murders by poison, runs as good a chance of conviction as an ugly, ignorant, friendless man who is cousin to nobody. We regret to say that might not be universally true in this country.

Mr. Kinkead's treatment of the Maybrick case is an odd sequel to a discussion on the identity of law and ethics.

It is only fair to say, however, that we have observed nothing else so bad in the book. J. C. G.

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AN ESSAY ON THE PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE, illustrated by Numerous Cases. By William Wills. Fifth English Edition of 1902, edited by Sir Alfred Wills, with American Notes by George E. Beers and Arthur L. Corbin. Boston: Boston Book Co. 1905. pp. xiii, 448, and about 150 extra lettered pages with the American Notes. 8vo.

It is good to have this book renewed in life. It now enters on its third generation, and the English editor has carefully preserved its freshness by adding new illustrations drawn chiefly from the reports in the Old Bailey Papers and the London *Times* during the last forty years. First published in 1838, it became famous abroad as well as at home, and has long served as an arsenal for countless forensic arguments and as a *vade mecum* for criminal practitioners. There is a sentimental touch in the circumstance that this English edition comes from the hand of the author's son, now a judge, and that two of his grandsons, one a medical man and the other a barrister, have assisted in the work.

We are glad to notice that in the preface the English editor properly pillories the flagrant literary looting done in 1896 by an American treatise entitled "A Treatise on the Law of Circumstantial Evidence, by Arthur P. *Will*, of the Chicago Bar." It was remarkable enough that a person of that name should be drawn to write a book on the same subject and under the same title as this already famous book by the author *Wills*. We thought so at the time, and have more than once publicly commented on the moral aspect of such a course. But it now further appears, from Justice Wills' preface, that this American book of 1896, out of 315 pages in the English Book of 1862, appropriated bodily all but 6 pages of a statutory tenor and 365 *lines* of the remainder. We trust that every library which contains the American piracy will now throw it into the waste-basket, mark out the title in the catalogue, and put the present work